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MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT AND ADMINISTRATIVE RULES

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
PO BOX 200201
HELENA, MONTANA 59620-0201
(406) 444-5400
e-mail: www.agr.mt.gov

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MONTANA DEPARTMENT OF AGRICULTURE
AGRICULTURAL SCIENCES DIVISION
HELENA, MT

TITLE 80, CHAPTER 15
SECTIONS
80-15-101 THROUGH 80-15-414

MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT

STATE OF MONTANA

Department of Agriculture
Agricultural Sciences Division
P.O. Box 200201
Helena, MT 59620-0201
(406) 444-2944

Department of Environmental Quality
Water Quality Bureau
Room A206, Cogswell Bldg
Helena, MT 59620
(406) 444-2406

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TITLE 80, CHAPTER 15
MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT

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1989 Statement of Intent:

The statement of intent attached to Ch. 668, L. 1989, provided: "A statement of intent is required for this bill in order to provide guidance to the department of agriculture and the department of health and environmental sciences concerning the administration of the provisions of the bill and the adoption of rules.

Because the departments share responsibility for certain duties established by the bill, the departments shall coordinate their rulemaking efforts and whenever possible adopt identical rules for the areas of shared responsibility, including:

(1) ground water monitoring as authorized by [sections 10 and 11] [80-15-202 and 80-15-203];

(2) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by [sections 7, 10, and 11] [80-15-107, 80-15-202, and 80-15-203];

(3) maintenance of confidentiality of certain data as required by [section 8] [80-15-108]; and

(4) administrative civil penalties as authorized by [section 22] [80-15-412].

The board of health and environmental sciences is responsible for adoption of certain ground water quality standards for agricultural chemicals as required by [section 9] [80-15-201]. The board shall adopt appropriate rules as necessary to comply with the special requirements and considerations that apply to the adoption of these standards as specified in [section 9] [80-15-201], including acquisition of current and scientifically valid data from the United States environmental protection agency (EPA) and other sources and communications with EPA concerning the content and status of promulgated federal standards, nonpromulgated federal standards, and other relevant EPA regulations and materials.

The department of agriculture is responsible for the development of agricultural chemical ground water management plans. The department shall adopt appropriate rules to ensure compliance with the requirements of [section 12] [80-15-211 through 80-15-218], including procedures for the development of the plans, communication with sources of information needed for the plans, communication with citizens who may be affected by the plans, and criteria for ensuring that the content of the plans meets the objectives of preventing ground water impairment, minimizing the presence of agricultural chemicals in ground water, and protecting present and future beneficial uses of ground water as specified in [section 12] [80-15-211 through 80-15-218]. The department of agriculture shall also adopt rules specifying procedures for obtaining comments on agricultural chemical ground water management plans from the department of health and environmental sciences, for adoption of completed plans, and for making modifications to adopted plans."

PART 1 -GENERAL PROVISIONS

80-15-101. Short title. This chapter may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

80-15-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(6) "EPA" means the United States environmental protection agency.

(7) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

(8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-201(3) or (4).

(9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

(10) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

(11) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from human activities over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

(12) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

(13) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

(14) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

(15) "Person" means any individual, group, firm, cooperative, corporation, association,

partnership, political subdivision, state or federal government agency, or other organization or entity.

(16) "Point of standards application" means the specific location in an aquifer where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of environmental quality to implement the provisions of this chapter.

(17) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

(18) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.

(19) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

(20) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the board as required by 80-15-201.

(21) "Use" means any act of handling or release of an agricultural chemical or exposure of humans or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation.

80-15-103. Policy. It is the public policy of this state to:

(1) protect ground water and the environment from impairment or degradation due to the use of agricultural chemicals;

(2) allow for the proper and correct use of agricultural chemicals;

(3) provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in ground water; and

(4) provide for education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods.

80-15-104. Administration. (1) The department and the department of environmental quality shall administer this chapter.

(2) The department of environmental quality is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards as authorized by 80-15-201, ground water monitoring as authorized by 80-15-202 and 80-15-203, providing comments to the department during the development of agricultural chemical ground water management plans, promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 75, chapter 5.

(3) The department is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans as authorized by 80-15-211 through 80-15-218, 80-15-401 through 80-15-405, and 80-15-411 through 80-15-414, public education as authorized by 80-15-106, ground water monitoring as authorized by 80-15-202 and 80-15-203, other duties related to promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 80, chapters 8 and 10.

(4) This chapter does not limit the department's responsibility to enforce agricultural chemical label directions and prohibitions.

(5) The administration of this chapter, including rulemaking and hearing functions authorized by this chapter, must be conducted in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4.

80-15-105. Rulemaking. (1) The board, subject to the provisions of 80-15-110, shall adopt rules for the administration of this chapter for which the board and the department of environmental quality have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of environmental quality on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412.

80-15-106. Educational programs. (1) The department, in cooperation with the Montana state university extension service, shall develop and conduct appropriate educational programs to promote the policy specified in 80-15-103. The department and the Montana state university extension service may charge a fee for the educational programs, commensurate with the costs of program development and administration.

(2) All fees collected by the department pursuant to this section must be deposited in the state special revenue fund. The department may spend the funds for the purposes set forth in this section.

(3) All fees collected by the Montana state university extension service must be deposited in a special account identified for this purpose. The extension service may spend the funds for the purposes set forth in this section.

80-15-107. Research. The department or the department of environmental quality shall promote, for the purposes described in 80-15-103, cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals.

80-15-108. Confidentiality. (1) The department and the department of environmental quality shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.

(2) The department of environmental quality shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section.

80-15-109 reserved.

80-15-110. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the board may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board may incorporate by reference comparable federal regulations or guidelines.

(2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the board makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under

this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

Part 2 - Control

80-15-201. Ground water standards. (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for each agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in 80-15-202; or

(c) that the department and the department of environmental quality predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard has not been published for an agricultural chemical for which the board is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of environmental quality determines that EPA cannot comply with the request within 15 days, the board shall adopt an interim numerical standard, provided that the board shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The board may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The board shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The board shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over

a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the board's responsibility to adopt rules and standards under Title 75, chapter 6.

80-15-202. Monitoring programs. (1) The department or the department of environmental quality shall conduct monitoring programs to determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical to enter ground water, if either department determines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil.

(2) The department and the department of environmental quality shall evaluate all information relating to this section that is received from any person, based upon standard procedures, protocols, and confirmatory procedures established by rule. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes.

80-15-203. Evaluation and use of monitoring results. (1) When providing preliminary monitoring results or confirmed monitoring results to ground water users or the public, the department and the department of environmental quality shall also provide any applicable standard or interim numerical standard.

(2) When monitoring results reveal the presence of an agricultural chemical in ground water:

(a) the department of environmental quality is the lead department for determining health risks; and

(b) the department is the lead department for determining compliance with agricultural chemical ground water management plans authorized by 80-15-211 through 80-15-218 and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title 80, chapters 8 and 10.

(3) The department and the department of environmental quality shall cooperatively evaluate the results of monitoring programs authorized by 80-15-202.

(4) Based on the results of monitoring, the department and the department of environmental quality shall implement appropriate actions specified in this chapter to mitigate any existing impacts of an agricultural chemical found in ground water and to prevent future impacts of an agricultural chemical that may be found in ground water, in relation to human health, agriculture, and the environment.

(5) The department may not undertake compliance and enforcement actions authorized by this chapter and the department of environmental quality may not undertake compliance and enforcement actions authorized by Title 75, chapter 5, unless there is sufficient evidence collected through:

(a) monitoring at a point of standards application that reveals that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated

a provision of 80-15-402 or Title 75, chapter 5;

(b) other investigations that reveal that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5; or

(c) monitoring that reveals a significant probability for an agricultural chemical to enter ground water.

80-15-204 through 80-15-210 reserved.

80-15-211. General agricultural chemical ground water management plan. The department shall develop and implement a general state agricultural chemical ground water management plan to achieve the policies of 80-15-103. This plan must include general program elements set forth in this chapter and best management plans and best management practices. Prior to publication of the plan, the department shall provide a 30-day period for the department of environmental quality to prepare and submit comments on the plan.

80-15-212. Specific agricultural chemical ground water management plans. (1) Except as provided in 80-15-216, the department shall develop and implement agricultural chemical ground water management plans specific to particular agricultural chemicals and to a defined geographical area:

(a) when the level of an agricultural chemical found in ground water is at 50% of the standard or interim numerical standard at a point of standards application and is scientifically validated;

(b) when a definite trend of increased presence of the agricultural chemical in ground water at a point of standards application is scientifically validated;

(c) when agricultural chemicals have been determined to have migrated in the ground water from the point of detection;

(d) when EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns and when EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate management plan; or

(e) when agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment.

(2) Any person using an agricultural chemical that is addressed by a specific agricultural chemical ground water management plan in the geographical region that is addressed by the plan shall comply with the plan. The department may specifically identify and designate persons who are under the plan and may inform any person about the plan.

(3) The department shall prioritize preparation of specific agricultural chemical ground water management plans in consideration of the specific circumstances of each area and within available resources.

80-15-213. Beneficial use to be considered in developing management plans -- water classification. (1) (a) In developing general and specific agricultural chemical ground

water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans.

(b) If the ground water has not been classified:

(i) the department shall consider it to be included in the classification representing the highest quality of ground water until the ground water is classified by the department of environmental quality; and

(ii) the department may proceed to develop an agricultural chemical ground water management plan as required by 80-15-212(1).

(2) The department may request the department of environmental quality to classify certain ground water and may collect the data and information required by the department of environmental quality to classify the ground water. If adequate technical data and financial resources are available as determined by the department of environmental quality, the department of environmental quality shall classify ground water at locations as requested by the department.

80-15-214. Contents of specific agricultural chemical ground water management plan. (1) A specific agricultural chemical ground water management plan must include:

(a) requirements to prevent ground water impairment that are based on ground water use, value, and vulnerability and that address all applicable aspects of agricultural chemical use; and

(b) requirements to prevent or minimize further presence of the agricultural chemical in the ground water and to provide protection for the present and future beneficial use of the ground water.

(2) A specific agricultural chemical ground water management plan may include but is not limited to the following elements:

(a) identification of geographical areas where an agricultural chemical may be used;

(b) ground water, soil, meteorological, and geological characteristics;

(c) best management plans and best management practices;

(d) identification of high-priority ground water;

(e) certification, licensing, training, and education requirements for persons using agricultural chemicals;

(f) identification of setback areas around water wells where certain activities may be restricted;

(g) agricultural chemical application rates and timing and related use criteria;

(h) alternative pest management techniques, including integrated pest management;

(i) other requirements for pesticides, as set forth in Title 80, chapter 8, and related rules, and for fertilizers, as set forth in Title 80, chapter 10, and related rules;

(j) EPA requirements; and

(k) alternative soil fertility practices.

80-15-215. Benefits of appropriate agricultural chemical use to be considered. (1) When developing and implementing a specific agricultural chemical ground water management plan, the department shall consider the benefits of appropriate use of the agricultural chemical and shall consult with the Montana state university extension service.

(2) Within available resources, the department shall contact users of an agricultural

chemical and user groups that will be subject to a general or specific agricultural chemical ground water management plan to request their recommendations concerning the development of the plan.

80-15-216. Commercial fertilizer ground water management plan. The department may develop and implement a commercial fertilizer ground water management plan if the department and the department of environmental quality determine that residues from commercial fertilizer are present in the ground water or when EPA implements a program to protect ground water from fertilizers.

80-15-217. Management plans -- rulemaking -- review. (1) The department shall adopt specific agricultural chemical ground water management plans through rulemaking; however, the department may implement emergency plans as set forth in 80-8-105(4) or as authorized by the Montana Administrative Procedure Act. Prior to rulemaking, the department shall provide to the department of environmental quality a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of environmental quality to prepare comments on the plan.

(2) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking.

80-15-218. Notice to buyer. A person who sells agricultural land that is subject to the provisions of a specific agricultural chemical ground water management plan shall provide the buyer with written notice about his obligations under the plan and shall forward a copy of the notice to the department. The department is not responsible for enforcement of this section.

80-15-219. Repealed. Sec. 500, Ch. 418, L. 1995.

Part 3
Funding

80-15-301. Agricultural chemical ground water protection accounts -- acceptance and expenditure of gifts, grants, and funds. (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of environmental quality agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of environmental quality may individually or jointly spend funds received by their respective accounts for the purposes authorized by this chapter.

80-15-302. Special funding. (1) A fee of $95 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of environmental quality; and

(ii) Montana state university extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the fee imposed by 80-10-201(1). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department.

Part 4
Enforcement

80-15-401. Authority to investigate and inspect. Authorized representatives of the department, consistent with the responsibilities set forth in this chapter and upon presentation of department-issued credentials, may at reasonable times or under emergency conditions enter upon any public or private property to:

(1) investigate conditions relating to compliance with agricultural chemical labels, agricultural chemical ground water management plans, monitoring requirements, or ground water protection requirements and to investigate violations of plans or compliance orders;

(2) gain access to and copy any records required by the department in the administration of this chapter;

(3) establish and inspect monitoring equipment; and

(4) sample ground water, including drinking water supply sources such as wells and similar structures.

80-15-402. Prohibited activity. It is unlawful for a person to:

(1) violate any provision of a specific agricultural chemical ground water management plan;

(2) violate any lawful order issued pursuant to this chapter; or

(3) violate any provision of this chapter.

80-15-403. Compliance orders. (1) In furtherance of 80-15-402, the department may issue a compliance order to a person who violates a standard, an interim numerical standard, or any other requirement established pursuant to this chapter. The department shall coordinate its

proposed actions pursuant to this section with proposed actions of the department of environmental quality pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) (a) The department may issue a compliance order to a person who violates any requirement established pursuant to this chapter. This subsection does not apply:

(i) to commercial wood treatment facilities; or

(ii) when agricultural chemicals have caused or are likely to cause contamination of a public water supply system, as defined in 75-6-102.

(b) The provisions of this subsection (2) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site.

(3) When issuing a compliance order, the department may require a person who has violated a provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

80-15-404. Injunctions authorized. The department may commence a civil action seeking appropriate relief, including a permanent or temporary injunction pursuant to 80-8-306 or 80-10-303, as applicable, for a violation that is subject to a compliance order under 80-15-403.

80-15-405. Emergencies. Notwithstanding any other provisions of this chapter, if the department finds that an emergency exists that requires immediate action to protect ground water from agricultural chemicals or to prevent use of ground water impaired or likely to be impaired by agricultural chemicals, the department may, without notice or hearing, issue necessary orders or adopt rules to protect public health, welfare, and safety. The duration of an emergency order or rule is limited to the emergency provisions of the Montana Administrative Procedure Act as specified in 2-4-303.

80-15-406 through 80-15-410 reserved.

80-15-411. Violators subject to penalties. (1) A person found to be in violation of this chapter or a rule established pursuant to this chapter is subject to the penalty provisions of 80-15-412 through 80-15-414.

(2) For the purpose of this section, the term "person" means, in addition to the definition in 80-15-102, any responsible corporate officer.

(3) Nothing in this chapter may be construed as requiring the department or an authorized agent of the department to report minor violations of this chapter for prosecution when the department or an authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.

(4) Action under 80-15-412 through 80-15-414 does not bar the department from enforcement of this chapter or of rules or orders issued under this chapter by injunction or other appropriate remedy.

(5) The department and the department of environmental quality shall coordinate actions when a violator is subject to the penalties authorized by 80-15-412 through 80-15-414 and to the penalties authorized by Title 75, chapter 5, for the same violation.

80-15-412. Administrative civil penalty. (1) A person who commits a violation of this chapter may be assessed an administrative civil penalty by the department of not more than $1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than $500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by this chapter or Title 75, chapter 5, that is issued or undertaken by either the department or the department of environmental quality.

(2) An administrative civil penalty may not be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

80-15-413. Judicial civil penalty. A person who commits a violation as specified in 80-15-402 shall be subject to a judicial civil penalty not to exceed $10,000. Each occurrence constitutes a separate violation.

80-15-414. Criminal penalties. (1) A person who intentionally commits a violation as specified in 80-15-402 is guilty of an offense and subject to a fine not to exceed $25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than $50,000 for each day the violation continues or imprisonment for not more than 2 years, or both.

(2) Except as otherwise provided in this chapter, a person convicted of violating any of the provisions of this chapter or rules issued under this chapter or who misrepresents, impedes,

obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of this chapter is guilty of a misdemeanor and shall be fined not less than $100 but not more than $1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall, upon conviction, be punished by a fine of not more than $5,000 or by imprisonment for not more than 6 months, or both.

(4) A person who with intent to defraud uses or reveals confidential information and data provided under this chapter or rules issued under this chapter shall, upon conviction, be fined not more than $5,000 or imprisoned for not more than 1 year, or both.

MONTANA DEPARTMENT OF AGRICULTURE
AGRICULTURAL SCIENCES DIVISION

ADMINISTRATIVE RULES OF MONTANA

CHAPTER 11
SUB-CHAPTER 1 THROUGH 12

AGRICULTURAL CHEMICAL GROUND WATER RULES

STATE OF MONTANA

Department of Agriculture
Agricultural Sciences Division
P.O. Box 200201
Helena, MT 59620-0201
(406) 444-2944

Department of Environmental Quality
Water Quality Bureau
Room A206, Cogswell Bldg
Helena MT 59620
(406)444-2406

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MONTANA DEPARTMENT OF AGRICULTURE
AGRICULTURAL SCIENCES DIVISION

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ADMINISTRATIVE RULES OF MONTANA

Sub-Chapter 1
Definitions

4.11.101 DEFINITIONS These definitions apply to all rules adopted under the Montana Agricultural Chemical Ground Water Protection Act Title 80, chapter 15, MCA.

(1) "Affected person" means any person that is required to comply with a SMP or other requirements of Title 80, chapter 15, MCA, that is or potentially may be adversely affected by the impairment or degradation of ground water; or for which an agricultural chemical has been detected in their well.

(2) "Confidential business information" herein referred to as "CBI" is data or information submitted or provided under authority of Title 80, chapter 15, MCA in any form to the department, by the environmental protection agency (EPA), agricultural chemical registrants, licensed or permitted pesticide dealers, retailers and applicators, fertilizer manufacturers or distributors or any person. CBI agricultural chemical data or information may include; confidential statements of the complete agricultural chemical formula, agricultural chemical registration data or information and information concerning the sales, production or use of pesticides or fertilizers.

(3) "Degradation" means the presence of an agricultural chemical in ground water at a concentration that meets or exceeds the standard as defined in 80-15-102(2), MCA.

(4) "Environment" includes water, air, land, plants, and humans and other animals living therein and the interrelationships which exist among these.

(5) "General agricultural chemical ground water management plan" means a written state-wide plan, herein referred to as "GMP", which describes the general environmental conditions of the state, ground water resources, common agricultural chemical uses and their properties, agriculture cropping and livestock practices, regions vulnerable or potentially vulnerable to ground water impairment or degradation by agricultural chemicals, best management plans and practices, educational programs and other general program elements set forth in Title 80, chapter 15, MCA.

(6) "Good faith effort" means a substantiated or measurable attempt to comply with the provisions of Title 80, chapter 15, MCA and the rules adopted thereunder or any specific agricultural chemical ground water management plan.

(7) "Impairment" means the presence of an agricultural chemical in ground water or increase in its concentration in ground water for which its present and future beneficial use may be affected and which is contrary to 80-15-103, MCA.

(8) "Official test result" means a test result which is obtained following the department approved quality assurance
and quality control (QA/QC) field and laboratory procedures.

(9) "Significant harm" means: having a measurable or verified observation of adverse effects on public health, the environment, agricultural crops or livestock; the verified presence of an agricultural chemical which meets or exceeds the standard and; the definitions set forth in ARM 4.10.1501 (7), (21), (67), (71), (98) and (100).

(10) "Significant probability" means the likelihood based on the most recent valid scientific or technical information and/or documented evidence, that an agricultural chemical

could enter ground water.

(11) "Specific agricultural chemical ground water management plan", herein referred to as "SMP", means rules adopted for the purpose of preventing or reducing the potential or incidence of ground water impairment or degradation from an agricultural chemical or chemicals within a specific management zone which may include the provisions of 80-15-214 (2), MCA.

(12) "Specific management zone", herein referred to as a "SMZ" means an area, region or localized site, the boundaries of which are defined by the department based on the best available hydrogeologic data in a SMP.

(13) "Unofficial test result" means a test result which does not meet department approved quality assurance and quality control (QA/QC) field and laboratory procedures.

(14) "Vulnerable" or "Vulnerability" means the factors that determine the potential for or actual impairment or degradation of an aquifer or ground water. These factors include, but are not limited to; depth to a confined or unconfined aquifer, soil type, clay and organic matter content, texture, structure, porosity, moisture, local climatic conditions and irrigation practices, ground water recharge rates, well construction, and other factors that determine the fate and transportation of agricultural chemicals in ground water.

Sub-Chapter 2
General Management Plan

4.11.201 GENERAL MANAGEMENT PLAN (1) The department, when developing or modifying the GMP, will include the requirements of 80-15-211 and 80-15-213, MCA and many of the program elements for a SMP in 80-15-214, MCA. The intent of the GMP is to protect ground water and the environment from ground water impairment or degradation from agricultural chemicals by providing agricultural chemical users with information and data on:

(a) aquifer and ground water information with special emphasis on regions in the state that may be vulnerable to impairment or degradation from agricultural chemicals;

(b) special state or federal agency programs and requirements;

(c) special factors such as irrigation practices, and meteorological or geological characteristics;

(d) agricultural chemical application techniques, chemical characteristics, benefits and risks in terms of ground water impairment or degradation;

(e) the leaching potential of chemical residues in soils whether from a point or nonpoint source;

(f) proper and modified uses of agricultural chemicals to prevent their introduction into ground water;

(g) the utilization of alternative agricultural practices, and integrated pest management systems; and

(h) soil fertility practices.

(2) A list of all data and information obtained during the development of the GMP will be available from the department.

4.11.202 GENERAL BEST MANAGEMENT PRACTICES (1) The department in consultation with the Montana State University Extension Service (MSUES) will write and incorporate directly or by reference best management practices and plans (BMP's) into the GMP. These BMPs will provide recommendations and information to chemical users on minimizing the impact of agricultural chemicals on ground water through proper use of chemicals at mixing/loading sites, areas treated with agricultural chemicals, and at disposal and storage facilities. The BMP's will also include information on alternative agricultural strategies.

4.11.203 GMP PUBLIC PARTICIPATION (1) The department will follow the procedures set forth in this rule when developing or modifying the GMP. The department will:

(a) prepare an outline of the GMP for use at public meetings;

(b) sponsor interagency and public meetings;

(c) consult with local, state and federal agencies, universities, agricultural chemical user groups and the public, to identify the provisions, best management plans and practices, information and data needed, the agricultural chemicals of concern and plans for development of the GMP.

(2) Upon completion of the activities listed in (1) the department will prepare a draft GMP. The department will solicit through meetings and correspondence additional agency and public comment on the draft GMP. Copies of the GMP will be available for public review and comment at the department's Helena office. Additional copies will be made available for agency and public review and comment dependent upon available resources. The department will consider public comments, revise the draft if necessary, and submit the draft or revised draft GMP to the department of health and environmental sciences (DHES) for that department's review and comments in accordance with ARM 4.11.402.

(3) The department will prepare a final GMP upon completion of the DHES 30 day review and comment period. If no substantive modifications are made, the plan will be finalized and implemented by the department. If substantive modifications are made the department will provide for additional public comment.

(4) The department, in cooperation with the MSUES as set forth in ARM 4.11.204 and with other agencies, user groups and the public, will disseminate the GMP information to chemical user groups and the public.

(5) Copies of the GMP will be made available to the public upon request. The department may charge for the printing and mailing cost of the document. . 12/28/90.)

4.11.204 GMP EDUCATION (1) The department in cooperation with the MSUES will conduct educational programs to inform agricultural chemical users and other persons on the provisions of the GMP. The educational program may also include the use of written and audio-visual materials on particular aspects of the elements set forth in the GMP.

4.11.205 GMP EVALUATIONS (1) The department will periodically evaluate the contents of the GMP with knowledgeable research and technical persons to determine if the plan is meeting the objectives of Title 80, chapter 15, MCA. The department in cooperation with research and technical persons, users of agricultural chemicals, members of any appointed advisory committee and the public will develop and use specific evaluation criteria for determining the effectiveness of the GMP. The initial evaluation will be made after 2 years,

following which additional evaluations will be made as needed. Based upon these evaluations the department may revise elements of the plan to ensure compliance with Title 80, chapter 15, MCA. The department may hold public meetings to assist in evaluation of the GMP. The department will follow the procedures in ARM 4.11.203 throughout this evaluation effort.

The department will also evaluate the GMP through the provisions set forth in ARM (4.11.903).

Sub-Chapter 3
Specific Management Plan

4.11.301 SPECIFIC MANAGEMENT PLAN (1) The department will develop a SMP when any of the criteria in 80-15-212 (1) MCA, are met. All SMPs must be adopted as administrative rules. A compliance or emergency order issued under 80-15-403, MCA may be adopted as a SMP.

4.11.302 SMP CONTENT (1) SMPs will incorporate provisions set forth under 80-15-214 (1), MCA. The department will consider incorporation of appropriate elements and provisions set forth in 80-15-214 (2), MCA in the SMP that are necessary to achieve the requirements of 80-15-214 (1), MCA and other requirements of Title 80, chapter 15, MCA. The content of these provisions will be contingent upon;

(a) the extent and nature of the problem;
(b) the type of agricultural chemical(s) involved;
(c) soil and water analytical results;
(d) geological and aquifer characteristics when known;
(e) land use patterns;
(f) soil type and related characteristics;
(g) meteorological conditions;
(h) depth to ground water;
(I) current and potential beneficial uses of the groundwater;
(j) physiography;
(k) jurisdictional and ownership boundaries; and
(l) other elements deemed necessary by the department.

(2) Information and data contained in the SMP will be obtained from a variety of sources. The department will attempt to acquire the most recent and accurate information available. If appropriate data is not available the department will proceed with the SMP utilizing the expertise of knowledgeable persons. The department and associated persons may conduct studies to obtain data and information that are lacking. Once these data or information are obtained the SMP will be evaluated to determine if revisions are necessary. A list of all data and information obtained during the development of the SMP will be available from the department.

4.11.303 BMP'S FOR SMP (1) The department in consultation with MSUES may incorporate BMP's into every SMP. The BMP's may address agricultural chemical use, use of alternative agricultural chemicals, integrated pest management techniques, alternative agricultural practices and methods, and other provisions deemed necessary by the department.

4.11.304 SMP - PUBLIC PARTICIPATION (1) The department will follow the

procedures set forth in this rule when developing a SMP. The department, in the following order will:

(a) prepare an outline for the SMP for use at public meetings, which will include a description of the facts and circumstances that led the department to identify the need for a SMP;

(b) sponsor interagency and public meetings;

(c) consult with local, state and federal agencies, universities, and agricultural chemical user groups and the public, to identify the provisions, best management plans and practices, information and data needed, other agricultural chemicals of concern and plans for development of the SMP;

(d) consult with the MSUES to identify the benefits of appropriate use of the agricultural chemicals within the proposed SMZ of the SMP.

(2) Upon completion of these activities the department will prepare draft SMP rules. The department will submit the draft SMP to the DHES for that department's review and comment in accordance with ARM 4.11.402.

(3) Once the department has reviewed and incorporated appropriate DHES comments on the draft SMP, draft rules will be noticed into the Montana Administrative Register. Public comment and hearing provisions of Title 2, chapter 4, MCA will be followed by the department.

4.11.305 SMP EDUCATION (1) The department in cooperation with the MSUES and other persons will educate agricultural chemical users and other persons within the SMZ on the provisions of the SMP. The educational program may include the use of written and audio-visual materials on particular elements set forth in a SMP.

4.11.306 SMP EVALUATIONS The department will periodically evaluate the content of the SMP with knowledgeable research and technical persons to determine whether the program is meeting the objectives of Title 80, chapter 15, MCA. The department in cooperation with research, technical and interested persons, users of agricultural chemicals, members of any appointed advisory committee and the public will develop and use specific evaluation criteria for determining the effectiveness of the SMP. The initial evaluation will be made after two years, following which additional evaluations will be made as needed. When substantial changes are necessary, the department will determine what elements of the plan need to be revised to ensure compliance with Title 80, chapter 15, MCA. The department may hold public meetings to assist in making evaluations. The department will follow the procedures in ARM (4.11.304) throughout this evaluation process. The department will also evaluate the SMP through the provisions set forth in ARM (4.11.903).

4.11.307 PRIORITIZING PREPARATION OF SMP'S (1) The department shall use any or all of the following criteria for prioritizing the preparation or revision of SMP's in situations when several SMP's are required, based on 80-15-212(1), MCA and when available resources limit the department's ability to work on all of the required SMPs simultaneously:

(a) properties and volumes of the agricultural chemical(s) being used in a SMZ or region of the state that could cause ground water impairment or degradation;

(b) the concentration(s) or migration of agricultural chemicals detected in ground water;

(c) the number of persons and/or water wells that are or reasonably could be affected in a SMZ or region of the state;

(d) the problem cannot be completely corrected through an enforcement option other than a SMP;

(e) vulnerability of the ground water to impairment or degradation;

(f) other documented factors deemed appropriate by the department.

Sub-Chapter 4
Establishment of Advisory Committees

4.11.401 GMP OR SMP ADVISORY COMMITTEES (1) The department may establish advisory committees to assist in the development, implementation or evaluation of general and specific management plans.

4.11.402 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES REVIEW AND COMMENT (1) The department will provide a completed draft GMP and drafts of SMP's or modifications to such plans to the department of health and environmental sciences (DHES) for review and comment, as required by 80-15-105 (2) (b), 211 and 217, MCA. The draft GMP or SMP will be submitted to the director of DHES or the director's designee. Upon documented delivery of the drafts the 30-day statutory review and comment period will begin. The 30-day comment period means calendar days and will end at 5 p.m. on the 30th day.

(2) Changes in format, grammar, DHES standards (80-15-102 (20), MCA) or classification of ground water and updated monitoring results, are excluded from the management plan review process.

(3) Within the 30-day review and comment period the DHES may request meetings with the department to discuss provisions of the plans and resolve questions and issues.

(4) The department will consider DHES comments or suggested modifications and incorporate those found appropriate in the final draft of the GMP, future modifications to the final GMP, draft rules for any SMP and future proposed rules for a SMP.

(5) The department will prepare a final GMP in accordance with ARM 4.11.203.

(6) The department will prepare the proposed SMP rules upon completion of the DHES 30-day review and comment period. The department will publish the proposed rules in the Montana Administrative Register.

4.11.403 SOURCES OF INFORMATION (1) The department in developing the GMP or SMP's may utilize the sources of information, personnel, publications, and research listed in this rule along with any other sources the department deems appropriate. The sources include: environmental protection agency, United States departments of agriculture and interior, Montana state departments of health and environmental sciences, natural resources and conservation, state lands; Montana bureau of mines and geology; other state agencies; units of the Montana state university system; local governments; state agencies and universities from other states; public interest groups; agricultural chemical registrants; agricultural user associations; conservation districts; and similar sources that may be able to provide technical and/or operational advice or information to the department.

Sub-Chapter 5 reserved

Sub-Chapter 6

4.11.601 MONITORING (1) The department shall perform both statewide monitoring and specific management plan monitoring as required by 80-15-202, MCA for the presence of agricultural chemical residues. The department may monitor media including: soil, air, plants, water, animals, and any other media identified as necessary to accomplish the provisions of Title 80, chapter 15, MCA.

(2) Monitoring shall be used to determine:

(a) the occurrence, extent and probability of agricultural chemical impairment or degradation of ground water in Montana;

(b) the need for intensified monitoring in a particular location;

(c) the need for preparation of specific ground water management plans as provided in 80-15-212, MCA;

(d) compliance with the requirements of Title 80, chapter 15, MCA and rules adopted thereunder; and

(e) whether the provisions of a SMP are reducing the occurrence or concentration of agricultural chemicals in the environment.

4.11.602 SELECTION OF MONITORING SITES (1) Factors that may be used in establishing priority for selection of sampling sites include, but are not limited to:

(a) local cropping practices;

(b) agricultural chemical use patterns;

(c) soil characteristics;

(d) depth to water table;

(e) ground water usage:

(i) public or private drinking water supply;

(ii) non-potable use;

(f) existing water quality;

(g) previous detections of agricultural chemical residues in ground water;

(h) the potential for adverse impact of impaired or degraded ground water on human health or the environment:

(i) number of wells per unit area;

(ii) volume of ground water used for human consumption per unit area.

(i) impairment or degradation of irrigation water;

(j) agricultural chemical user activities which may lead to ground water impairment or degradation;

(k) suspected misuse of chemicals, violation of Title 80, chapter 15, MCA, or violation of a SMP.

(2) The department will consider seasonal changes in ground water recharge and flux and irrigation scheduling when determining appropriate times to sample water.

(3) The department will re-evaluate site prioritization based on new or updated information.

4.11.603 SAMPLE COLLECTION AND ANALYSIS (1) Sample collection and analysis performed for monitoring and investigation shall follow the department QA/QC requirements.

(2) A test result submitted to the department or the DHES must be accompanied by QA/QC field and laboratory procedures if it is to be considered as an official test result.

4.11.604 POINT OF STANDARDS APPLICATION TEST RESULTS

(1) The department will review and evaluate all official ground water test results. Official ground water test results will be classified as either:

(a) negative detection;

(b) positive detection below the adopted standard;

(c) positive detection which meets or exceeds the adopted standard;

(d) positive detection for which there is no standard.

(2) Negative detections will be entered into the departments ground water data base and reported to the affected person.

(3) Positive detections lower than 50% of the standard will be entered into the departments database, reported to the affected person, and will be noted as a well to be resampled to observe changes in agricultural chemical concentrations in the aquifer. The department will prepare a SMP under 80-15-212 (1) (b) or (c), MCA, if additional monitoring demonstrates a scientifically-validated increase in agricultural chemical residues in ground water or if an agricultural chemical has migrated from the point of detection.

(4) Positive detections that meet or exceed 50% of the standards will be reported to the affected persons and resampled to confirm the results.

(5) If positive detections are confirmed, the following steps will be taken:

(a) enter in ground water database;

(b) intensify monitoring in the immediate vicinity, to identify the source(s) of impairment or degradation and to determine the extent of impairment or degradation;

(c) conduct investigation into the possible cause of impairment or degradation;

(d) prepare a specific management plan as provided in 80-15-212, MCA; and

(e) initiate any necessary enforcement monitoring.

(6) An unofficial test result may be used to:

(a) initiate monitoring in a particular area;

(b) notify local and state agricultural, environmental and health officials.

4.11.605 DEVELOPMENT AND MAINTENANCE OF GROUND WATER QUALITY DATABASE (1) The department will develop and maintain a database consisting of information and data compiled from previous and current ground water monitoring. This information may be summarized annually and made available, along with the ground water standard, to the public upon request. The database will consist of a number of data elements based on current department and EPA recommendations.

Sub-Chapters 7 and 8 reserved

Sub-Chapter 9
Compliance Penalties and Violations

4.11.901 ENSURE COMPLIANCE (1) The department will ensure compliance with Title 80, chapter 15, MCA, the GMP and SMPs utilizing the procedures and activities set forth in ARM 4.11.902 through 4.11.904.

4.11.902 COMPLIANCE INSPECTIONS (1) The department will conduct inspections of agricultural chemical facilities and users to determine compliance with Title 80, chapter 15, MCA. Special inspections, investigations or monitoring may be conducted:

(a) when misuse of an agricultural chemical is suspected;

(b) if an inspection reveals that an agricultural chemical may impair or degrade ground water; and

(c) if monitoring reveals the presence of an agricultural chemical in ground water.

4.11.903 COMPLIANCE EVALUATIONS (1) The department will evaluate the requirements of compliance orders, emergency orders, enforcement actions, and SMPs in terms of:

(a) compliance dates;

(b) compliance with special agricultural chemical use and record keeping requirements;

(c) removal or treatment orders for soil or water clean-up;

(d) provisions of compliance orders, emergency orders, enforcement actions and SMP's; and

(e) other requirements of Title 80, chapter 15, MCA.

(2) Based upon the evaluations, the department may develop new or revised orders or SMPs, or take additional enforcement actions to ensure compliance. New or revised SMPs will be developed following procedures in ARM 4.11.304. The department in cooperation with MSUES may also revise the agricultural chemical ground water educational programs.

4.11.904 GMP AND SMP EVALUATIONS (1) The department will evaluate the GMP and established SMPs according to procedures in ARM 4.11.205 and 4.11.306.

4.11.905 COORDINATING PROPOSED ORDERS (1) The department will coordinate the issuance of compliance orders and emergency orders with the DHES. The department will determine if DHES is proposing orders under 75-5-613, MCA on the same issue as the department is proposing orders under Title 80, chapter 15, MCA. The department will communicate by correspondence or meetings with the DHES to ensure that orders of both departments are coordinated.

4.11.906 DETERMINING SIGNIFICANT PROBABILITY (1) For purposes of determining significant probability the department will obtain information during investigations or monitoring of agricultural chemical use, chemical spills, dumps, or misuse. Examples of information that will be considered are:

(a) characteristics of the chemical that influences entry into ground water such as water solubility, half-life, absorption and adsorption;

(b) depth to and direction of flow, volume and rate of ground water;

(c) distance to existing wells or other conduits to ground water;

(d) soil characteristics including depth, texture, organic matter and permeability;

(e) amount of chemical used, spilled, dumped or otherwise available to enter ground water;

(f) land features that could influence chemical movement such as surface water drainage;

(g) precipitation;

(h) cropping history and irrigation; and

(i) other factors deemed appropriate by the department.

4.11.907 CONTENTS OF ORDERS (1) Each compliance or emergency order issued by the department will contain:

(a) the name of the person or persons to whom the order will be served;

(b) the authority of the department for issuing the order;

(c) a description of the actions that constitute the alleged violation or that may constitute significant probability and the provisions of the act or rule that establish the violation;

(d) the corrective actions required by the department;

(e) criteria for determining the duration of any required monitoring;

(f) the time frame within which corrective actions are to be initiated, conducted and completed; and

(g) appeal rights under Title 2, chapter 4, MCA.

(2) In determining the time for compliance the department will consider the gravity of the violation using criteria set forth in ARM 4.11.915.

4.11.908 CORRECTIVE ACTIONS (1) In issuing a compliance or emergency order the department may require the following actions:

(a) monitoring to determine residue levels, trends and movement of agricultural chemicals in ground water, soils or other materials;

(b) characterization of ground water features such as direction of flow, depth and rate of flow;

(c) inventory of wells, surface water features, springs, groundwater recharge areas, and other ground water resources in the area or in a SMZ that may be affected;

(d) monitoring the direction, depth and rate of movement of any impaired or degraded ground water;

(e) removal and disposal, relocation or treatment of soil or other materials;

(f) provision for alternate water supplies for drinking and suitable water for irrigation and other beneficial uses;

(g) provision for removal or reduction of agricultural chemicals from impaired or degraded ground water using appropriate clean-up technology;

(h) procedural or operational changes that prevent, reduce or minimize the probability of ground water impairment or degradation from agricultural chemicals; and

(i) other provisions deemed appropriate to protect ground water.

(2) The department may require that persons who are served with a compliance or emergency order submit a written plan that describes the procedures for conducting corrective actions. Examples of procedures that may be required include quality assurance procedures, analytical methods, detection limits, sampling and monitoring methods, clean-up and the other provisions of this rule.

4.11.909 DURATION OF MONITORING (1) Monitoring required under a compliance or emergency order shall consist of sampling and chemical analyses conducted using department approved procedures and methods:

(a) Required ground water monitoring shall continue until residues in ground water are within levels established in the compliance or emergency order by the department in consultation with the DHES.

(b) The department when determining duration of monitoring, shall consider the following factors: classification of the ground water, present and future beneficial uses, the standard, the laboratory detection level and whether or not the impaired or degraded ground water is affecting other persons or aquifers.

(c) The department may require that ground water monitoring continue for one or more annual hydrologic cycles after analytical results fall within the accepted level.

(2) The department may require that persons who are served with a compliance or emergency order submit a written plan that describes the procedures for conducting corrective actions. Examples of procedures that may be required include quality assurance procedures, analytical methods, detection limits, sampling and monitoring methods, clean-up and the other provisions of this rule.

4.11.910 PROCEDURES FOR ISSUING COMPLIANCE AND EMERGENCY ORDERS (1) All orders will be issued following the requirements of Title 2, chapter 4, part 6, MCA.

4.11.911 ENFORCEMENT (1) Whenever the department has reason to believe that a violation of Title 80, chapter 15, MCA, or any adopted rule thereunder has occurred and the department finds it is in the public interest to assess an administrative civil penalty, it may initiate a civil penalty action pursuant to 80-15-412, MCA.

4.11.912 ABILITY TO STAY IN BUSINESS (1) Where a determination of the appropriate amount of the penalty must be made under 80-15-412, MCA, the "effect on the person's ability to stay in business" will not be considered, until such time and to the extent the charged person places confide financial information in issue by presentation thereof, accompanied by appropriate documentary evidence.

4.11.913 OTHER PENALTIES (1) The department may, in the interest of judicial economy, combine a disciplinary proceeding under 80-8-211, MCA (suspension or revocation of licenses and permits) or other violations of Title 80, chapter 8, MCA, or rules adopted thereunder, or violations of Title 80, chapter 10, MCA, with a proceeding under 80-15-412, MCA. Any appeal from a disciplinary action against the license or permit or other violations, shall be reviewed pursuant to the procedures established by Title 2, chapter 4, MCA.

4.11.914 PENALTY DETERMINATION (1) Each violation of Title 80, chapter 15, MCA, or rules adopted thereunder is considered a separate offense. As stated in 80-15-412, MCA each offense is subject to a separate penalty not to exceed $1,000, with the exception of farm applicators possessing a pesticide permit or using a fertilizer whose penalty cannot exceed

$500 for the first offense.

(2) The penalty matrices set forth in this rule establish the initial penalty value for each offense. The significance of the violation, the degree of care exercised and whether significant harm resulted to health, environment, agricultural crops or livestock may decrease or increase a penalty within the limits listed below. A person may present information on their ability to stay in business, as set forth in ARM 4.11.912, Petitioning for a reduction in the proposed civil penalty. The department shall have the option to select the most appropriate penalty and penalty value for each and every violation of the act.

AGRICULTURE

PENALTY MATRIX

Type of Violation	1ST Offense	2ND Offense	3RD and Subsequent Offense
(a) Violate any lawful provision order	100-1000	500-1000	750-1000
(b) Violate any provision of a lawful order:	100-1000	500-1000	750-1000
(c) Violate any provision of Title 80, chapter 15, MCA:	100-1000	500-1000	750-1000

4.11.915 GRAVITY OF VIOLATIONS (1) The department will consider several factors when determining the gravity of a violation as set forth in 80-15-412, MCA. These factors relate to provisions established by Title 80, chapters 8 or 10, or Title 80, chapter 15, MCA and rules adopted thereunder, agricultural chemical labeling, SMP requirements or similar requirements that regulate the use of agricultural chemicals. The factors set forth below are examples of requirements that may be used. They are neither inclusive nor necessarily additive in substance or number and not necessarily presented in order of importance.

(2) A violation may be considered more grave when:

(a) a restricted use pesticide defined by ARM 4.10.1501 (90) is involved versus a general use pesticide as defined by ARM 4.10.1501 (50);

(b) a pesticide is involved that is more toxic than other available, effective registered pesticides;

(c) agricultural chemical levels in ground water meet or exceed the standard, pursuant to 80-15-201, MCA;

(d) the extent, and severity of the violation results in harm to health, environment, or agriculture crops, or livestock;

(e) use is inconsistent with label directions and precautions or department rules;

(f) the person's history of compliance illustrates continued noncompliance or disregard for compliance;

(g) the violation results in impairment or degradation of ground or surface water;

(h) a person uses an agricultural chemical which is not registered or labeled, or has been cancelled, suspended or banned by EPA or the department by statute, rule or order;

(i) a person does not possess the proper pesticide license credential or permit to use or purchase a pesticide, or is not supervised as required by Title 80, chapter 8 or Title 80, chapter 15, MCA and rules adopted thereunder;

(j) records are not maintained or are improperly maintained;

(k) the person has knowledge of Title 80, chapter 15, MCA, and rules adopted thereunder or specific management plans which were violated.

4.11.916 DEGREE OF CARE (1) In determining the applicability of the degree of care, the following standards will apply:

(a) Negligence means a failure to exercise reasonable care;

(b) Reasonable care means that degree of care demonstrated with a knowledge of the nature and probable consequences of the act or omission that a prudent person would ordinarily exercise acting in their own concern;

(c) Gross negligence means knowing, intentional or reckless conduct.

(2) The department in its investigation and inspection of an alleged violation will attempt to determine and verify the degree of care exercised by a person. If a violation is substantiated the department will consider the degree of care exercised by a person in determining any administrative civil penalty.

(3) The charged persons may present evidence of the degree of care exercised, which will be considered by the department for the purpose of determining and mitigating the amount of penalty.

4.11.917 SIGNIFICANCE OF HARM (1) The department will attempt to determine and verify significant harm resulting from any violation. The type and amount of verified significant harm will be considered in determination of civil penalty amounts and may mitigate or enhance the civil penalty.

(2) For verification of significant harm the department will consider documented physical evidence and expert opinion from knowledgeable persons. Examples of such persons include pesticide specialists, physicians, toxicologists, biologists, water quality personnel, extension agents, university personnel, product technical representatives, and consultants and other personnel with documented qualifications.

(3) The following are criteria that the department will consider in determining significant harm including but not limited to:

(a) exposure to humans resulting in acute illness, chronic illness or death;

(b) exposure to livestock or other domestic animals resulting in illness, death, or residues in the livestock or by-products that exceed tolerances or prevent marketing or consumption;

(c) exposure to crops, ornamental plants or other plants being grown or cultivated that results in damage, destruction, reduction in yield or residues that exceed tolerances or prevent marketing or consumption;

(d) impairment or degradation of ground water that results in adverse effects to any existing or future beneficial use; and

(e) exposure and adverse impact on plants other than crops, animals other than livestock, soil, water or any other components of the environment.

Sub-Chapter 10 reserved

Sub-Chapter 11
Confidentiality

4.11.1101 PESTICIDE REGISTRANT CBI (1) The department shall rely on the determination of confidentiality by the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) for pesticide registrant data and information. Pesticide registrants claims for CBI must be consistent with the EPA determination and the registrant must advise the department of any reclassification of the data or information by EPA within 30 days. The department may evaluate the validity of any registrant claim of CBI at any time and reserves the right to declassify material as CBI when the registrants claim is found to be inconsistent with EPA's determination. In such cases the department shall provide the submitter of the information a 20 day comment and rebuttal period prior to declassification.

(2) Pesticide registrants in submitting data or information required by the department under the act, must:

(a) clearly mark any portions thereof which in the registrants opinion are trade secrets or commercial or financial production, sales or use information, and

(b) submit such marked material separately from other material required to be submitted under this act. All
submitted document packages containing CBI shall be accompanied by a cover letter describing CBI sections within the document package. Individual pages containing CBI within the submitted document packages shall be clearly marked as confidential.

(3) CBI shall be hand delivered or sent to the department via U.S. postal service, registered mail, return receipt requested or equivalent courier. The wording "Confidential Business Information - Pesticides" shall appear on the outer surface of the mailing container. CBI mailed to the department pursuant to data requirements under Title 80, chapter 15 or chapter 8, MCA shall be addressed as follows:

Montana Department of Agriculture
Environmental Management Division
Capitol Station
Helena, Mt. 59620

Attention: Division Administrator

(4) CBI received by the department shall be immediately secured in accordance with the procedures of the CBI rules. The director or the director's designee shall be responsible for initiating and maintaining security procedures.

4.11.1102 CBI-CHEMICAL USE AND SALES DATA (1) Dealers, distributors,

registrants, applicators or any person required to submit pesticide or fertilizer production, sales or use data or from whom the department through inspections obtains such pesticide or fertilizer use and sales data by authority under Title 80, chapter 15, MCA are not required to mark the data or related records information as CBI. Dealers, distributors, applicators, or other persons submitting such data may voluntarily mark the data CBI. If it is not marked CBI they may be held to have waived their right to CBI in the unlikely event the department releases any such data. The department will handle pesticide data as CBI within the requirements of the Attorney General's Opinion (38 Agriculture Opinions 1 1979). The department reserves the right to reveal agricultural chemical sales or use data of persons for which an enforcement case under Title 80, chapter 8 or 10, is finalized or in the course of an administrative hearing under Title 2, chapter 4, MCA. Data obtained under the authority of Title 80, chapters 8 or 10, MCA and transferred within the department for administration of Title 80, chapter 15, MCA shall be managed in the same manner as data submitted by any person under authority of Title 80, chapter 15, MCA.

4.11.1103 CBI SHALL BE STORED IN AN APPROVED SECURITY FILE

(1) Only employees authorized by the director may be issued keys or combinations to security files. No authorized employee may share keys or combinations with any person other than those authorized for direct access to CBI documents.

4.11.1104 AUTHORIZED ACCESS (1) The director will establish a written list of the department employees and other persons authorized access to CBI.

4.11.1105 DOCUMENT TRACKING (1) CBI documents received by the director or his primary designee shall be immediately logged in and stamped on the front page, in red ink, with the following wording:

CONFIDENTIAL DATA
NOT A PUBLIC RECORD

(2) All such CBI documents shall be assigned a document tracking number. The director shall designate the personnel responsible for recording the date of receipt, document tracking numbers and subsequent actions on a written tracking sheet which shall be affixed to the CBI document. Reproductions of CBI shall be performed only by authorized professional or clerical personnel as designated by the director. The tracking sheet shall bear the initials of the employee performing the reproductions, and the number of reproductions made. Reproductions or other physical forms of CBI shall be secured and tracked as described for the original CBI. The tracking sheet shall bear the initials and title of any employee authorized by the department or cooperative agency receiving the CBI, the date of receipt and subsequent date of return.

4.11.1106 MEETINGS (1) Only the submitter and authorized personnel shall be allowed to attend that part of meetings, otherwise public under 2-3-203, MCA, at which CBI will be discussed. Each person attending such a meeting shall sign an attendance log, listing his or her name, title, organization and telephone number. This log shall also include the tracking number(s) of the CBI document(s) distributed or discussed.

(2) A copy of the log shall be attached to the tracking sheet of each CBI document

discussed or distributed at the meeting. CBI shall be deleted from any minutes or transcripts of meetings which are made public. Recordings, minutes or transcripts containing CBI shall be stored and tracked as described for the original CBI. It is unlawful for any person present at a meeting in which CBI is discussed to use confidential data for his own advantage or to reveal the data to the general public.

4.11.1107 TELEPHONE (1) Authorized employees of the department may discuss the CBI over the telephone with other persons authorized to have access to CBI. Authorized employees of the department may discuss CBI with the submitter by the permission of the submitter only if the CBI is specifically identified by the submitter and the submitter is made aware that the department cannot guarantee the security of confidential information discussed over the telephone.

4.11.1108 TRAVELING (1) When an authorized department employee is required to travel while in the possession of CBI, such CBI shall remain in the employee's personal possession.

4.11.1109 TRANSMITTAL (1) CBI transmitted both within and without the department shall be hand delivered. When hand delivery is impractical, CBI shall be transmitted by certified mail return receipt requested or equivalent courier.

4.11.1110 CBI ACCESS JUSTIFICATION (1) Interagency access to CBI documents, shall be requested in writing and shall state the specific purpose for such access. The department recognizes that disclosure of specific CBI may be necessary for an agency to carry out a directive on behalf of the department, to fulfill said agency's own statutory obligations, or to complete an inquiry initiated by the department. Written requests for access to CBI by agencies outside the department shall be signed by a designated person from the agency authorized by the department to receive and review CBI. All such requests shall be entered as a permanent part of the document tracking system. The department reserves the right to deny CBI access to persons or agencies not providing adequate document security.

4.11.1111 ELIGIBILITY REQUIREMENTS (1) Agencies eligible for access to submitted documents containing CBI are those responsible by statute for the protection of public health or the environment. Each such agency shall submit, for approval by the department, a written proposed procedure to ensure the security of all disclosed CBI and shall agree, in writing, to treat all documents disclosed under this rule as confidential.

4.11.1112 INTERAGENCY (1) The department may enter into a memorandum of understanding (MOU) with any agency possessing an obligation, under Montana law, to provide protection of public health or the environment. Through the MOU, an agency shall provide the department a list of trained as specified in ARM 4.11.1116 designated persons requesting authorization to receive CBI, agree to treat all information disclosed by the department as CBI and insure adequate document security. The department may set time limits for the return of all disclosed CBI, and may recall all or any portion of the disclosed documents at any time. Agencies receiving CBI from the department through the procedures outlined above may not

reproduce or reveal to unauthorized person(s) such documents in any manner.

4.11.1113 PERSONNEL PRECAUTIONS (1) Personnel from any agency other than the department, authorized to receive and
review CBI documents, may not discuss the contents of said documents with any unauthorized persons. They may not discuss CBI over the telephone and may not produce notes or correspondence containing CBI.

4.11.1114 AUTHORIZATION (1) Prior to gaining access to CBI files all authorized employees of the department and designated personnel from other agencies shall sign a document stating that they have received, read and understand this rule, and shall abide by these CBI rules subject to penalties set forth in 80-15-414 (4), MCA.

4.11.1115 NOTIFICATION OF DISCLOSURE (1) Within 15 days of the date of disclosure to anyone other than authorized department employees, the director shall notify the submitter of disclosed CBI providing the name of the agency, date of disclosure, detailed description of the information disclosed, and the purpose of the disclosure. The department shall also provide proof that the receiver is authorized by the department to review CBI.

4.11.1116 TRAINING (1) All authorized department employees and all designated personnel in other agencies authorized to receive and review CBI shall receive training in procedures to follow in requesting access to, handling, distributing and storing documents containing CBI. Such training shall assure complete understanding of this rule by all such personnel.

4.11.1117 VIOLATIONS (1) Any authorized personnel within the department or agencies outside the department, who fail to comply with these confidentiality rules, shall be investigated by that agency and complete findings reported to the department's director. The department retains the authority to revoke an agency's access to CBI if violations of the department's CBI rules are documented. If CBI access is revoked, an agency may regain access to CBI by providing proof, satisfactory to the department, that adequate steps have been taken to improve security.

(2) Persons or agencies, who with intent to defraud, uses or reveals CBI, shall have their access to CBI immediately revoked. Violators, pursuant to 80-15-414 (4), MCA are subject to a misdemeanor and upon conviction may be fined not more than $5,000 or imprisoned for not more than 1 year, or both.

Sub-Chapter 12

SMP Plan

4.11.1201 GENERAL (1) The department hereby establishes rules for a specific agricultural chemical ground water management plan (SMP) regarding the registration and use of imazamethabenz methyl.

(2) The purpose and intent of these rules are to prevent or minimize the presence of imazamethabenz methyl in ground water in the Fairfield bench area as defined in ARM 4.11.1203, geographical area.

(3) The affected ground water resource is described as the Fairfield bench aquifer, which resides within the Sun River watershed (hydrologic unit code 10030104). The Fairfield bench aquifer is comprised of predominately class I water, suitable for public and private water supply, culinary and food processing purposes, irrigation, drinking water for livestock and wildlife and for commercial and industrial purposes with little or no treatment. As of June 22, 2001, the Fairfield bench aquifer is used for public water supply, community transient/non transient water supply, private domestic water supply, irrigation and stock watering. Public water supplies impacted by this rule include the Fairfield public water supply (public water supply) (PWS #00212), Greenfield elementary school district (PWS #03015) and the Tri-County water district (PWS #02912).

4.11.1202 DEFINITIONS The definitions are intended to supplement all existing rules adopted under the Montana Agricultural Chemical Ground Water Protection Act, Title 80, Chapter 15, MCA:

(1) "Best available technology" (BAT) means technology and practices currently available, which can practically and feasibly be implemented in production of agricultural crops.

(a) BATs are based on a best management practice (BMP) premise but need to be individualized to meet the specific needs of each field and the conditions experienced in that field. BATs may change throughout the season and from year to year to reflect changing conditions. BATs may require more initial and ongoing producer input.

(b) Implemented BATs are intended to reduce, eliminate, minimize or mitigate the presence of imazamethabenz methyl in ground water.

(c) BATs adopted by the department may be obtained form the agricultural sciences division, technical services bureau ground water program (Fairfield bench state management plan best available technologies, MDA technical document 00-01).

(2) "Chemical rotation" refers to the practice of alternating herbicides with different modes of action to delay or prevent development of resistance.

(3) "Imazamethabenz methyl" is the common name of the trade name product Assert, a selective postemergence herbicide used for control of wild oat, mustard, and buckwheat in sunflowers and all varieties of barley and wheat.

(4) "Integrated pest management" (IPM) is defined as a effective pest management strategy that integrates biological, cultural and chemical control mechanisms designed to prevent and reduce pest damage to tolerable levels.

(5) "Mode-of-action" (MOA) is all the processes associated with how an herbicide interacts with the plant and includes the absorption and translocation mechanism or site of action and metabolism.

(6) "Standard", as defined in 80-15-102(20), MCA, means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by rule of the department of environmental quality's board of environmental review as required by 80-15-201, MCA.

4.11.1203 GEOGRAPHICAL AREA (1) The area subject to the SMP is the Greenfield bench (commonly referred to as the Fairfield bench) located in Teton and Cascade counties. It is the area that resides within 47° 35′ N to 47° 42′ N and 111° 42′ W to 112° 00′ W and which encompasses the majority of irrigated acres within the Greenfield irrigation district. The geographical area may also be described as encompassing a block of 9 townships, designated as townships 21, 22 and 23 north and ranges 1, 2, and 3 west.

4.11.1204 AGRICULTURAL CHEMICAL (1) Imazamethabenz methyl is the agricultural chemical subject to the SMP.

4.11.1205 IMAZAMETHABENZ METHYL STANDARD (1) For the purposes of implementing the SMP rules and evaluating analytical results and determining appropriate responses, the department hereby adopts and incorporates by reference the Montana water quality standard of 400 parts per billion (ppb) for imazamethabenz methyl as designated in Circular WQB-7: Montana Numeric Water Quality Standards, September 1999. A copy of this document can be obtained from the Montana Department of Environmental Quality at P.O. Box 200901, Helena, MT 59620-0901.

4.11.1206 CONTENTS (1) The SMP for imazamethabenz methyl will be comprised of voluntary use of BATs and an educational program. Both the educational program and BATs may include:

(a) All users should attend SMP training prior to using imazamethabenz methyl on the Fairfield Bench. The educational program will, at a minimum, include:

(i) laws and regulations governing pesticide use and management:

(A) the Montana Pesticide Act, Title 80, chapter 8, MCA;

(B) the Montana Agricultural Chemical Ground Water Protection Act, Title 80, chapter 15, MCA;

(C) BATs as identified in (1) (b); and

(D) other topics as deemed appropriate by the department.

(ii) physical and chemical characteristic of imazamethabenz methyl; and

(iii) hydrology of the Fairfield bench.

(b) The department recommends that all users of imazamethabenz methyl incorporate the use of the following BATs into their crop production operations:

(i) The department recommends that producers maximize the amount of time between pesticide application and initiation of irrigation;

(ii) The department recommends that all users of imazamethabenz methyl work with Montana state university extension service (MSUES) and other relevant professionals to develop and implement a Fairfield bench IPM program include a focus on and/or recommendations specific to imazamethabenz methyl. Any IPM program adopted by a Fairfield bench producer should include scouting, use of economic thresholds, record keeping, sprayer maintenance and calibration, determination of application site characteristics, chemical rotation, irrigation management, application timing and other programmatic elements as identified by the individual producer and/or in conjunction with MSUES and/or a certified crop advisor;

(iii) All users of imazamethabenz methyl must comply with all imazamethabenz methyl label requirements. The department recommends that users of imazamethabenz methyl utilize

ancillary, additional and helpful information contained within the label that are applicable to the mitigation, reduction, elimination and prevention of imazamethabenz methyl in ground water. Because application of imazamethabenz methyl in a manner that is inconsistent with the label is a violation of the Montana Pesticide Act, the department strongly recommends that all users review pesticide labels prior to selection of a particular pesticide, calibration of equipment and actual pesticide application;

(iv) It is recommended that as environmental conditions permit, users of imazamethabenz methyl practice mode-of-action chemical rotation for all herbicides used in small grains and other corps associated with a small grains crop rotation system on a yearly basis. The intent of mode-of-action rotation is to address weed resistance issues and to reduce the total volume of pesticide used thereby reducing potential contaminant introduction into ground water; and

(v) The department recommends that imazamethabenz methyl users calibrate their pesticide applicator equipment a minimum of once a year. Users should conduct routine maintenance of their applicator equipment to assure correct and optimal functioning of equipment components and parts.

4.11.1207 PUBLIC NOTIFICATION (1) The department will notify licensed and permitted pesticide applicators within the defined geographical area, by mail, of the SMP and its requirements upon rule adoption and when rule revisions are adopted.

(2) The department will provide notice of the SMP to residents within the defined geographical area through a press release, public service announcements, posting on the department's website, notice through the department's Pesticide Applicator Newsletter, department pesticide applicator recertification program, routine inspections, registrants, pesticide distributors and pesticide dealers, public meetings and through agriculture groups.

(3) As required by 80-15-218, MCA, sellers of agricultural land must notify buyers, in writing, that the property being purchased is subject to a SMP. Notification must include his/her obligations under the plan. A copy of such notification must be forwarded to the department. Notifications should be sent to the Technical Services Bureau Chief, Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201.

4.11.1208 RECORD KEEPING (1) The department strongly recommends imazamethabenz methyl users keep records pertaining to the use of imazamethabenz methyl. Records should be written and should be maintained for at least two years.

(2) Records will be used to evaluate voluntary compliance with BATs.

(3) The department recommends maintaining the following information in their records:

(a) for pesticide use:

(i) chemical and trade names of pesticides used;

(ii) date of application;

(iii) rate of application; and

(iv) name of person/business making application.

(b) for irrigation:

(i) type of irrigation;

(ii) dates of irrigation;

(iii) duration and/or volume of irrigation (for example 24 hours or 1")

(c) date(s) of calibration.

4.11.1209 EVALUATION (1) Monitoring will be conducted to determine if the presence of imazamethabenz methyl in ground water is being mitigated.

(2) Routine inspections in the defined geographical area will be utilized to assess the level of voluntary compliance with the SMP.

(3) Review of the SMP will be conducted within two years of June 22, 2001 to determine if the SMP is adequately addressing ground water concerns.